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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THOMAS HEATON SPITTERS,
Plaintiff,
v.
SANTA CLARA COUNTY,
Defendant.

Case No. 18-cv-02760-BLF

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION; DENYING
WITHOUT PREJUDICE PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS; AND DISMISSING
COMPLAINT WITH LEAVE TO
AMEND**

[Re: ECF 2, 7]

Plaintiff Thomas Heaton Spitters, proceeding *pro se*, commenced this action against Defendant Santa Clara County on May 10, 2018, by filing a complaint and an application to proceed *in forma pauperis* ("IFP Application"). Compl., ECF 1; IFP Application, ECF 2. On June 1, 2018, Magistrate Judge Lloyd issued an Order directing that the case be reassigned to a district judge and a Report and Recommendation ("R&R") that the IFP Application be denied and that the complaint be dismissed with leave to amend for failure to state a claim upon which relief may be granted. Order and R&R, ECF 7. The R&R was served on Mr. Spitters by mail on June 1, 2018. COS, ECF 8.

Federal Rule of Civil Procedure 72(b)(2) provides that a party may file specific written objections to a magistrate judge's recommended disposition of a case within fourteen days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2). "The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*

Mr. Spitters timely filed two documents on June 18, 2018 which appear to be a Jury Demand and an Objection to the R&R. *See* Jury Demand, ECF 12; Objection to R&R, ECF 13. The Court has considered both filings. Mr. Spitters asks the Court to consider his prior IFP application to be sufficient and to move forward with a jury trial. He also objects to assignment of this case to a judge in the San Jose Courthouse.


Having considered Mr. Spitters' filings and reviewed Judge Lloyd's R&R *de novo*, the Court finds the R&R to be well-reasoned and correct in every respect. The Court agrees with Judge Lloyd's determination that the IFP Application is insufficient, as it provides no particulars regarding Mr. Spitters' financial circumstances. The Court also agrees with Judge Lloyd's determination that the complaint fails to identify any viable legal claim or theory. Finally, with respect to Mr. Spitters' objection to the assignment of his case to a San Jose judge, the assignment was made pursuant to the Court's normal procedures and Mr. Spitters has not provided any basis for excepting his case from those procedures.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

- (1) Judge Lloyd's R&R (ECF 7) is ADOPTED;
- (2) Mr. Spitters' IFP Application (ECF 2) is DENIED WITHOUT PREJUDICE to resubmission of a completed application as described in the R&R;
- (3) The complaint is DISMISSED WITH LEAVE TO AMEND;
- (4) Any amended complaint shall be filed on or before July 13, 2018; and
- (5) Leave to amend is limited to curing the deficiencies in the complaint discussed in Judge Lloyd's R&R, which is adopted by this Order. Plaintiff shall not add any claims or parties without express leave of the Court.

Dated: June 20, 2018


BETH LABSON FREEMAN
United States District Judge